



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/145701

PRELIMINARY RECITALS

Pursuant to a petition filed November 30, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Winnebago County Department of Human Services in regard to Child Care, a hearing was held on January 03, 2013, at Oshkosh, Wisconsin.

The issue for determination is whether respondent correctly denied Child Care benefits to petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Janet Hertzberg

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner resides with and cares for her two granddaughters, M.D. and M.K; petitioner is the legal guardian of her granddaughters.
3. Petitioner receives Kinship Care and Child Care benefits pertaining to M.D.

4. Until October 31, 2012, petitioner received Child Care benefits for her granddaughter, M.K.
5. At all times material hereto, M.K. qualified for and received state and federal supplemental security income (SSI) benefits.
6. Effective November 1, 2012, Child Care benefits for M.K. ended due to respondent's determination that petitioner's household income exceeded program limits.
7. The income of petitioner had to be counted in determining eligibility because she was not a Kinship Care recipient as relates to M.K.

DISCUSSION

The *Wisconsin Shares Child Care Assistance Manual* (Manual), §1.13.3, provides that financial eligibility for kinship care relatives who (1) receive kinship care benefits for the child, or have been placed on a waiting list for kinship care benefits, and (2) have a court order for care of the child are processed as Court Ordered Kinship Care cases in CARES Worker Web, and the income of the child's natural or biological family is used to determine financial eligibility. See also, Wis. Stat., §49.155(1m)(a); the requirement specifically references relatives who receive Kinship Care benefits; said relatives' income is not counted in the eligibility determination for child care if the child is placed with them pursuant to court order. Wis. Stat., §49.155(1m)(c)1h; Wis. Adm. Code, §DWD 12.26(2); Manual, Chap. 2, 2.3.2.1. If the Kinship Care eligible child is living with her grandparent pursuant to a court order, it is the parents' income that is counted, not the grandparent's income. Pursuant to this scenario, petitioner is entitled to, and receives Child Care benefits for M.D.

However, at issue in the present case is the eligibility of petitioner to receive Child Care benefits pertaining to M.K. M.K. is a four year old girl who suffers from permanent physical and mental disabilities. M.K. receives monthly federal and state SSI benefits, which combined with petitioner's income, result in household income in excess of Child Care program limits. An SSI recipient is not eligible for Kinship Care benefits. See, Wis. Stat. §48.57(3m)(am)6 and §48.57(3n)(am)5r. As such, petitioner's eligibility for Child Care benefits requires a determination of financial eligibility. See, Manual § 1.6.2.¹

¹ The *Manual* provides:

1.6.2 Income Limits

The applicant's Assistance Group must meet the program's income guidelines to be financially eligible for Wisconsin Shares child care assistance.

The income limit for new applicants, including cases that have closed for more than thirty days, is 185% federal poverty level (FPL) for the Assistance Group family size (excludes foster parents, kinship care parents who receive kinship care payments and have a court order for the child's care, and subsidized guardians/interim caretakers in Milwaukee County, see below).

1.6.2.1 Foster Parents, Subsidized Guardians in Milwaukee County Only, Kinship Care Relatives with A Court Order for Placement and Receipt of Kinship Care Benefits

If the applicant is caring for a child (ren) as:

A foster parent, or

A kinship care relative **who is receiving kinship care assistance** or is on a waiting list to receive kinship care assistance and has a court order for the child's placement, or

A subsidized guardian or interim caretaker in Milwaukee County, the income limit is based upon the child (ren)'s natural or adoptive family income being no more than 200% FPL at the time of the child's placement.

(emphasis added).

Petitioner meets the Department’s definition of a Kinship Care Relative – Long Term, to wit: “Kinship Care Relative. A relative who may *or may not be receiving kinship care benefits* and who is one of the following: a stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, first cousin, second cousin, nephew, niece, aunt, uncle, step-uncle, step-aunt, or any grand person of a preceding generation as denoted by the prefix of grand, great or great-great, whether by having the same ancestor, direct affinity or legal adoption, or the spouse of any person named in this paragraph, even if the marriage is terminated by death or divorce. Kinship Care Relative – Long-Term. Has the same meaning as the kinship care relative definition above and also has the additional requirement that the relative must have a court ordered guardianship under s. 48.977 Statutes.” *Manual* § 1.2.0 (emphasis added).

Respondent submitted an email string regarding petitioner’s situation. See, Exhibit 2. On November 20, 2012, J.H., an advocate for petitioner, wrote:

...[Petitioner] has a court ordered Ch. 48.977 guardianship for both [M.D. and M.K.]. I am able to pay [petitioner] kinship for M.D. but unfortunately state statute does not allow me to pay kinship for [M.K.] because she receives SSI. There is a flaw in the child care regs that doesn’t take this into account, resulting in grandparents with a Ch. 48.977 guardianship with disabled grandchildren receiving SSI being treated differently for child care purposes than their counterparts with healthy children who are able to receive kinship. ...

Id. In response, A.J. of the Department of Children and Families, wrote:

If there is a court order for guardianship and the child is receiving kinship or on the waitlist for kinship this is considered to be court ordered and grandma’s income would not count for that child. Unfortunately, the child who receives SSI would not be considered to be court-ordered kinship care because this child can not receive the monetary benefit, thus grandma’s income needs to count.

Id.

Wisconsin Administrative Code Chapter DCF 58 is entitled “Eligibility for the Kinship Care and Long-Term Kinship Care Program.” The Chapter specifically denies Kinship Care eligibility when a child is receiving supplemental security income, i.e., “[n]o kinship care payment under s. 48.57 (3m), Stats., or long-term kinship care payment under s. 48.57 (3n), Stats., may be made to a relative on behalf of a child who is receiving supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77, Stats.” Wis. Admin. Code § DCF 58.07(2).

Because M.K. is not eligible for Kinship Care, the disregard of her grandmother’s income that applies to M.D.’s Kinship-Care-eligible situation does not exist for M.K. There is no exception for SSI recipients, and in fact SSI recipients are specifically addressed and their relatives excluded from receiving payments. Petitioner argues that it is unfair and discriminatory to assign benefits in this fashion, but the provision is statutory. While I empathize with the petitioner’s situation, I do not possess the powers of a court of equity, and I lack any authority to order an extension of this public assistance as requested. The powers of the Department’s designated administrative law judges are limited to the “four corners” of Wisconsin law. As the petitioner conceded in testimony at hearing, the respondent has followed the law as written; I, too, must follow the law. See, Wis. Stats. §§ 49.46(1) and 49.47(4). The appeal must be dismissed.

CONCLUSIONS OF LAW

The county correctly determined that petitioner's income must be counted in determining child care eligibility for her granddaughter, M.K.

NOW, THEREFORE, it is ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Madison,
Wisconsin, this 21st day of March, 2013

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 21, 2013.

Winnebago County Department of Human Services
Child Care Benefits